

**MINUTES OF THE
JUDICIARY INTERIM COMMITTEE**

Wednesday, October 17, 2012 – 9:00 a.m. – Room 25 House Building

Members Present:

Sen. Mark B. Madsen, Senate Chair
Rep. Kay L. McIff, House Chair
Sen. Lyle W. Hillyard
Sen. Ross I. Romero
Sen. Stephen H. Urquhart
Rep. Derek E. Brown
Rep. LaVar Christensen
Rep. Fred C. Cox
Rep. Brian S. King
Rep. Paul Ray
Rep. V. Lowry Snow

Rep. R. Curt Webb
Rep. Mark A. Wheatley

Members Absent:

Rep. Christopher N. Herrod

Staff Present:

Ms. Chelsea Lloyd, Policy Analyst
Ms. Esther D. Chelsea-McCarty, Associate General Counsel
Ms. Jennifer Christopherson, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair McIff called the meeting to order at 9:15 a.m.

MOTION: Sen. Hillyard moved to approve the minutes of the September 19, 2012, meeting. The motion passed unanimously with Sen. Romero, Sen. Urquhart, Rep. Brown, Rep. Ray, and Rep. Webb absent for the vote.

2. Administrative Offices of the Courts Statutory Reports

Mr. Rick Schwermer, Assistant Court Administrator, Administrative Office of the Courts, distributed and explained "Utah State Courts - Utah's Third District Co-Parenting Mediation Program," "Divorce Orientation Program Summary for FY2012," and "Divorce Education for Parents Program Annual Report FY12." He briefly spoke about the reports and responded to questions from the committee. Mr. Schwermer stated that there is mandatory mediation in all divorces unless a waiver is obtained.

3. Children's Participation in Child Custody Proceedings

Sen. Luz Robles discussed 2012 General Session S.B. 139, "Child Custody Proceedings," which was distributed in the mailing packet, and said that the courts go through many procedures and that children suffer through this process. She requested the committee's input about changing the age from 16 to 14 for child participation in child custody proceedings and explained that she intends to propose draft legislation based on last year's bill.

Committee discussion followed.

MOTION: Chair McIff recommended that Sen. Robles consider deleting the words "the single" and inserting the word "a" on line 46 of 2012 General Session S.B. 139, "Child Custody Proceedings." The motion passed with Sen. Madsen and Rep. Christensen voting in opposition and Rep. Ray and Rep. Webb absent for the vote.

Committee discussion followed.

MOTION: Rep. Christensen recommended that Sen. Robles consider, after the word "custody," inserting the words "including a change in custody" on line 30 of 2012 General Session S.B. 139, "Child Custody Proceedings." The motion passed unanimously with Sen. Urquhart, Rep. Brown, and Rep. Ray absent for the vote.

Mr. Stewart Ralphs, Executive Director, Legal Aid Society, spoke in opposition to the bill and said that this legislation would send a clear message to the public that children control the custody decisions and that is not appropriate.

Ms. Sheri Rollings, teacher and mother, spoke in opposition of the bill and said that a 14-year-old child is not emotionally prepared to make such a decision.

4. Annual Report on DUI-Related Data

Mr. Ronald B. Gordon, Executive Director, Utah Commission on Criminal and Juvenile Justice, and Ms. Mary Lou Emerson, Director, Utah Substance Abuse Advisory Council, distributed and discussed "Tenth Annual DUI Report to the Utah Legislature." The executive summary of this report was included in the mailing packet.

Ms. Emerson explained that the data indicates, among other things, that 8% of the DUI arrests in FY2012 were under the legal drinking age. Ms. Emerson stated that DUI-related fatalities increased by 56% in FY2012. She responded to questions from the committee by saying that justice courts deal mostly with DUI misdemeanors and that district courts deal mostly with DUI felonies. Ms. Emerson said that there has been a significant decrease in under age drinking since the inception of the "Parents Empowered" program.

Mr. Gordon stated that there is not a higher conviction rate in justice courts than in district courts. He said that there is interest in having law enforcement agencies hold a DUI blitz every weekend in different locations.

Rep. Ray suggested that Alcohol Monitoring Systems, Inc. be brought in during the 2013 interim to demonstrate its DUI technology "Secure Continuous Remote Alcohol Monitoring."

Sen. Madsen requested data showing the number of those who have caused damage while driving with alcohol in their system, but with an alcohol level under the legal limit, before the next report.

5. 2013 Draft Legislation "Alimony Amendments"

Rep. Cox explained that the current draft includes the amendments made in the previous meeting to draft legislation "Alimony Amendments" (2013FL-0018/009) and stated that this draft strikes a good balance.

Mr. Ralphs spoke in favor of the legislation and said that the list of faults under subsection three are very appropriate. He expressed concern with the language "whether or not to award alimony" on lines 90 and 91 and said that it seems to suggest whether or not the court is going to award any alimony. He responded to questions from the committee by saying that the "whether or not" language is problematic.

Committee discussion followed.

MOTION: Sen. Hillyard moved to recommend draft legislation "Alimony Amendments" as a committee bill. Committee discussion followed.

SUBSTITUTE MOTION: Rep. Christensen moved to recommend draft legislation "Alimony Amendments" as a committee bill with the following changes: amend lines 90 and 91 by deleting the words "or not" and inserting the words "and the terms thereof" after the word "alimony."

The substitute motion passed with Sen. Urquhart voting in opposition and Sen. Romero, Rep. Brown, and Rep. Wheatley absent for the vote.

6. Other Business / Adjourn

MOTION: Sen. Hillyard moved to adjourn the meeting. The motion passed unanimously with Sen. Romero and Rep. Brown absent for the vote.

Chair McIff adjourned the meeting at 11:49 a.m.